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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LIEM HIEU LE,

Plaintiff,

v.

CITY OF PITTSBURG,

Defendant.

CASE NO. 3:08-cv-00727-JL

**DEFENDANT CITY OF
PITTSBURG'S SEPARATE
STATEMENT IN LIEU OF JOINT
CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: August 1, 2008
Time: 2:00 p.m.
Location: Ctrm. 10, 19th Floor
Judge: Hon. Susan Illston

On April 25, 2008, this Court ordered the parties to file a joint case management conference statement in anticipation of the scheduled August 1, 2008 case management conference. Since that time, on July 9, 2008, the Court granted the City of Pittsburg's motion to dismiss with leave to amend. Pursuant to that order, the Court gave plaintiff until July 18, 2008, to file an amended complaint.

The time for filing the amended complaint has now expired. Defendant has not received an amended complaint, nor is an amended complaint shown on the

1 docket for this Court as of July 24, 2008. Under the circumstances, as there are no
 2 pending identifiable claims in this case, defendant City of Pittsburg cannot
 3 reasonably file a case management statement identifying issues and suggesting an
 4 appropriate schedule. Furthermore, defense counsel has not heard from plaintiff,
 5 who filed this action *in propita persona*, concerning a joint statement.

6 Under the circumstances, defendant respectfully requests that the Court
 7 dismiss this action as plaintiff has failed to comply with the Court's order to file an
 8 amended complaint.

9 As the Court is aware, plaintiff has filed a petition for bankruptcy,
 10 denominated *In re Le, et al*, United States Bankruptcy Court docket number 07-
 11 43151-RJN. The automatic stay provisions of 11 U.S.C. section 362 do not
 12 constitute an impediment to the Court dismissing the present action, since the
 13 automatic stay provision does not apply to a suit brought by the debtor. *U.S. v.*
 14 *Inslaw* (D.C. Cir. 1991) 932 F.2d 1467, 1473; *In re White* (9th Cir.BAP 1995) 186
 15 B.R. 700, 705.

16 Defendant is informed that, on July 23, 2008, the bankruptcy Court converted
 17 Mr. Le's action from Chapter 13 (reorganization) to Chapter 7 (liquidation), and
 18 appointed the United States Trustee to take control of the estate. The City of
 19 Pittsburg is therefore serving this document upon both Mr. Le and the Trustee.

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CONCLUSION

Defendant City of Pittsburg respectfully requests that the Court dismiss this action in its entirety pursuant to the Court's July 9, 2008 order.

Dated: 7/24/08

GIBBONS & CONLEY

By: 

SEAN C. CONLEY

Attorneys for Defendant City of Pittsburg

1 **LE v. CITY OF PITTSBURG**2 **U.S. District Court, Northern District of California Case No. CV 08-0727-JL**3 **PROOF OF SERVICE**

4 I am employed in the County of Contra Costa, State of California. I am over the age of 18
 5 years, and not a party to the within action. My business address is 1333 North California Boulevard,
 6 Suite 110, Walnut Creek, California, 94596. On the date set forth below, I caused to be served a
 7 true copy of the foregoing **DEFENDANT CITY OF PITTSBURG'S SEPARATE**
 8 **STATEMENT IN LIEU OF JOINT CASE MANAGEMENT CONFERENCE**
 9 **STATEMENT** on the following person(s) in this action addressed as follows:

10 Liem Hieu Le
 11 713 Caskey Street
 12 Bay Point, CA 94565
 13 Tel: (925) 709-1063
 14 Plaintiff pro se

Office of the U.S. Trustee
 1301 Clay Street, Suite 690N
 Oakland, California 94612
 Tel: (510) 637-3200

13 ☒ **BY MAIL.** I am readily familiar with my firm's practice for collection and processing of
 14 correspondence for mailing with the United States Postal Service, to wit, that correspondence
 15 will be deposited with the U.S. Postal Service this same day in the ordinary course of
 16 business. I sealed said envelope and placed it for collection and mailing, following ordinary
 17 business practices.

18 ☒ **FEDERAL.** I declare that I am employed in the office of a member of the bar of this Court
 19 at whose direction the service was made.

20 ☒ **STATE.** I declare under penalty of perjury under the laws of the State of California that the
 21 foregoing is true and correct.

22 Executed on July 24, 2008

23 
 24 KARIN JOHNSON-BUTLER